IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5951 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GSRTC, VAHAN VEVAHAR BHAVAN ASTODIA, NR GEETA MANDIR & 1 - Petitioner(s)

Versus

BHANABHAI BHIMABHAI SONDARVA – Respondent(s)

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Appearance :

MR NAGESH C SOOD for Petitioner(s) : 1 - 2.
MR JS BRAHMBHATT for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 29/11/2005

ORAL JUDGMENT

1. The petitioner, namely, Gujarat State Road

Transport Corporation, has filed this petition under Articles 226 and 227 of the Constitution of India, praying for quashing and setting aside the order passed by the Labour Court, Junagadh, on 28.12.1999 in Reference (LCJ) No.310/1993.

2. The petition was admitted on 26.6.2000 and ad interim relief was granted.

3. The case of the petitioner Corporation is that the respondent was appointed as a Part Time Traffic Controller under the petitioner No.1 Corporation whereby he was allowed to perform his duties for a period of 5 hours every day. While the respondent was working at Bantva Depot he was asked to issue student concession passes for the students who were traveling through the buses of S.T.Corporation. While inspecting the records at Bantva Depot,

in the pass section it was discovered that there was a financial irregularity committed by the respondent and the records / accounts submitted by him on 20.12.1991 and 24.3.1992 did not commensurate and a mis-appropriation to the tune of Rs.2,726.45 was allegedly committed by the respondent.

4. It is further stated that on 1.6.1992 a charge-sheet was issued being No.160/1992 to the respondent because of serious financial irregularity said to have been committed by the respondent. On 8.6.1992 the respondent submitted his reply to the charge-sheet and was also personally heard by the authorities on 17.8.1992 in due compliance with the principles of natural justice. On 28.9.1992 the respondent once again, through a letter requested for relevant documents and submitted his defence. On 28.4.1993 after affording full

opportunity to the respondent to defend himself with regard to the charges of serious financial irregularity, the respondent was found guilty of the charges levelled against him of financial irregularity and consequently his services were terminated.

5. The said order of termination was challenged being Reference (LCJ) No.310/1993 before the Labour Court, Junagadh. The Labour Court vide its order dated 28.12.1999 directed the petitioner Corporation to reinstate with 30% back wages. It is this order of the Labour Court which is under challenge in the present petition.

6. Mr.Nagesh C. Sood, learned advocate appearing for the petitioner submitted that the Labour Court has committed very serious error and has not considered the findings of Inquiry Officer

in their proper perspective. He has further submitted that the findings of the Inquiry Officer were based on cogent evidence and had reasonable nexus and credibility and the report submitted by the Inquiry Officer was in consonance with the rules of natural justice. He has further submitted that it was erroneous on the part of the Labour Court to conclude that no findings have been recorded by the Inquiry Officer. The respondent was held to be guilty of charge of misappropriation and only after proving the charges against the respondent, the authorities, in exercise of their powers, passed an order of termination by a speaking order. Mr.Sood further submitted that the respondent in his statement has accepted the financial irregularity committed by him and therefore there was no reason for the Labour Court to believe that the allegation against the respondent was not proved. The

misappropriated amount was already deposited by the respondent which fact is itself sufficient to prove his guilt of financial irregularity and misappropriation. Mr.Sood further submitted that the finding of the Labour Court that there was no independent witness produced by the petitioner, the charge could not be proved against the respondent was erroneous as the respondent himself under his signature was supposed to deposit the amount collected while issuing concession passes and that there existed an irregularity in the amounts mentioned in the two statements submitted by him and therefore there was no requirement for an independent witness to prove the charges against him. Mr.Sood further submitted that the Labour Court has also erred in coming to the conclusion that the issuance of student concession was not part of the job for which the respondent was appointed despite the fact

that a circular issued by the petitioner Corporation was produced before the Labour Court, wherein it is clearly stated that the issuance of student concession passes fell within the scope of duties of part time Traffic Controller.

7. As far as admission of the respondent workman is concerned, Mr.Sood has relied on the decision of Hon'ble Supreme Court **in the case of Channabasappa Basappa Happali vs. The State of Mysore, reported in 1971 (1) Supreme Court Cases 1**, wherein it is held that since the appellant admitted all the relevant facts on which the decision could be given against him, it cannot be stated that the enquiry was in breach of any principle of natural justice. In that case the Court observed that the decision as to whether leave could be extended or not and acted upon it. The enquiry officer had to

go by the reasons given before him. On the whole, therefore, the admission was one of guilt in so far as the facts on which the enquiry was held. The Court has also made it very clear that there is no distinction between admission of facts and admission of guilt.

8. Mr.Sood further relied on the decision of Hon'ble Supreme Court **in the case of Delhi Transport Corporation vs. Shyam Lal, reported in (2004)8 Supreme Court Cases 88**, wherein it is held that it is a fairly settled position in law that admission is the best piece of evidence against the person making the admission. It is, however, open to the person making the admission to show why the admission is not to be acted upon.

9. Mr.Sood has further relied on the decision of Hon'ble Supreme Court **in the case of**

Dharmarathmakara Raibahadur Arcot Ramaswamy Mudaliar Educational Institution vs. Educational Appellate Tribunal And Another, reported in (1999) 7 Supreme Court Cases 332, wherein the Court has observed that in a case where the facts are almost admitted, the case reveals itself and is apparent on the face of the record, and inspite of opportunity no worthwhile explanation is forthcoming, it would not be a fit case to interfere with the termination order.

10. Based on the aforesaid judgment Mr.Sood has submitted that the Labour Court has committed an error of law as well as the facts and thereby the termination order was upset and the petitioner Corporation was directed to reinstate the respondent workman with 30% back wages. Hence, the order of Labour Court is illegal, erroneous and is required to be

quashed and set aside.

11. An affidavit in reply was filed by Mr.J.S.Brahmbhatt, learned advocate appearing for the respondent workman. He has reiterated the submissions made before the Labour Court and has submitted that no error was committed by the Labour Court while upsetting the termination order. He has further submitted that the order passed by the Labour Court was just, proper and legal. It is further submitted that the respondent workman has not committed any offence whereby any financial irregularity was committed. Despite this fact, without any proper reason, service of the respondent workman was terminated on the basis of suspicion and surmises. It is further submitted that the respondent workman was appointed as a part time Traffic Controller and he was forced to work for more than 8 hours

every day due to shortage of staff prevailing in the Depot. He was further submitted that the respondent was not involved in any financial irregularities but after an inspection was made by the Superior Officers and the explanation was sought for from the Departmental authorities for some of the irregularities prevailing in the Depot Administration, the respondent workman was held responsible for such irregularities and punished without any proper reason. He has further submitted that the respondent workman was to help regular Traffic Controller in his work but he was forced to do clerical work as well as executive work i.e., to make entry in controller chart, take delivery of the parcels and to despatch the said parcels to its destination and prepare the record for the parcels and to look after the public inquiry and other work. He has further submitted that the respondent had to do

this work under pressure from Officer.

12. Mr.Brahmbhatt has further submitted that the Labour Court has rightly observed in his judgment that there was no written complaint about the alleged offence and further observed that the petitioner has not taken care to produce the students for examination before the Inquiry Officer and the reporter had also not replied to the question put by the workman. He has further submitted that no proper inquiry was conducted and no evidence was led and no complaint was filed and only with malafide intention the termination order was passed. The Labour Court has after having upsetted the said termination order, directed the petitioner to reinstate.

13. Mr.Brahmbhatt has relied **on the decision of Madras High court in the case of Selvaraj P.**

vs. M.D.Kattabomman Transport Corporation Ltd., & others, wherein it is held that the admission of guilt has to be determined by taking into account total explanation given by delinquent employee and not by picking out of one sentence from explanation. The Court has also taken the view in the said decision that the principles of equity, natural justice and fair play were violated and the domestic inquiry was conducted in violation of the said principle. The Court has also observed that the employee was found guilty based on answers given in cross examination and no other evidence. No witness was examined to substantiate charges in presence of delinquent employee. Two Checking Inspectors who did not give any statement were asked to be cross-examined by delinquent employee simultaneously. Based on these facts the Court has quashed the termination order.

14. Mr.Brahmbhatt, has further relied on the **decision of Sarvesh Kumar Sharma, Bulandshahr, vs. Station Director, reported in 2005 LAB I.C. 467**, wherein the Court has taken a view that the punishing authority is to take into account the totality of circumstances, existence of substantial evidence to sustain the charges and then to form opinion about proof of charges and quantum of punishment if any is to be given. The Court has come to the finding that there is no justification to uphold the finding recorded by the Inquiry Officer as approved by the disciplinary authority and appellate authority, which are not based on substantial evidence to sustain extreme penalty of dismissal from service.

15. Based on the aforesaid judgments and the conclusion arrived at by the Labour Court, Mr.Brahmbhatt has submitted that no

interference is called for while exercising powers under Articles-226 and 227 of the Constitution of India, in the order passed by the Labour Court and the petition is, therefore, required to be dismissed.

16. After having heard the learned advocates appearing for the respective parties and after having gone through the pleadings, documents and authorities cited, the Court is of the view that the Labour Court has committed an error in upsetting the termination order passed by the petitioner Corporation and substantiating the said order by directing the petitioner Corporation to reinstate the respondent workman with 30% back wags. The Labour Court has mainly proceeded on the footing that there was no evidence, no complaint, no witnesses have been examined and no material was produced, which substantiate the guilt committed by the

respondent workman. The Labour Court has erroneously gone into the aspect that the work which was taken from the respondent workman was not allotted to him and he has not committed any irregularities. However, from the statement of respondent workman it made clear that he has retained amount for four months and amount was deposited thereafter. There was clear cut admission on the part of the respondent workman. When there is admission as observed by the Hon'ble Supreme Court, then no evidence is required. Admission itself is good evidence. When the petitioner is dealing with the public money and public money is misappropriated by the respondent workman, it cannot be tolerated in any organisation. The Court is always very harsh when question of misappropriation comes before the Court. Here, the respondent workman has himself made an admission, which does not require any evidence. Hence, the order of

termination passed by the petitioner Corporation is just and proper and the Labour Court is not right in disturbing the same.

17. Considering the law laid down by the Hon'ble Supreme Court in aforesaid three decisions and considering the facts of the present case the Court is fully satisfied that the Labour Court has committed an error in disturbing the termination order passed by the petitioner Corporation. The order of the Labour Court is, therefore, quashed and set aside. The petition is accordingly allowed. Rule is made absolute without any order as to costs.

kks (K. A. PUJ, J.)